

No. 25-1197

In the
Supreme Court of the United States

BRANDI GREER, PETITIONER,

v.

BENTON SCHOOL DISTRICT, RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
ARKANSAS SUPREME COURT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether Section 504 of the Rehabilitation Act provides a parent a private cause of action for employment retaliation against a public school district when the parent is an employee of an agency supplying substitute teachers as a third-party contractor.

PARTIES

Petitioner is Brandi Greer, the appellee below and plaintiff in the trial court.

Respondents are (1) Benton School District, (2) Lori Bacon, in her individual and official capacity, and (3) Lita Gattis, in her individual and official capacity. Respondents were the appellants below and defendants in the trial court.

CORPORATE DISCLOSURE STATEMENT

Respondents Lori Bacon and Lita Gattis are natural persons. Respondent Benton County School District is a governmental entity. Consequently, the respondents are not subject to the Corporate Disclosure Statement requirement under Sup. Ct. R. 29.6.

RELATED PROCEEDINGS

Saline County Circuit Court:

Greer v. Benton Sch. Dist., No. 63CV-20-522 (Nov. 22, 2021) (summary-judgment order)

Greer v. Benton Sch. Dist., No. 63CV-20-522 (Sept. 26, 2024) (final judgment)

Arkansas Supreme Court:

Benton Sch. Dist. v. Greer, 2023 Ark. 160, 677 S.W.3d 799, No. CV-22-143, (Nov. 9, 2023)

Benton Sch. Dist. v. Greer, 2026 Ark. 53, 730 S.W.3d 1, No. CV-25-11 (Mar. 12, 2026)

TABLE OF CONTENTS

Question Presented	i
Parties	ii
Corporate Disclosure Statement	ii
Related Proceedings	ii
Table of Authorities	iv
Statement of the Case	1
A. Factual Background	1
B. Statutory Framework	2
C. Judicial Proceedings	6
Reasons for Denying the Petition	11
I. There is no existing circuit split on the real question presented.	11
II. This case is not a suitable vehicle for review because the final judgment does not turn on the question presented.	15
III. The decision below is not wrong, and so Petitioner’s arguments lack merit.	17
Conclusion	18

TABLE OF AUTHORITIES

Cases

<i>A.J.T. v. Osseo Area Sch., Indep. Sch. Dist. No. 279</i> , 605 U.S. 335 (2025)	4
<i>Alexander v. Choate</i> , 469 U.S. 287 (1985)	3, 18
<i>Conrail v. Darrone</i> , 465 U.S. 624 (1984)	3
<i>Cummings v. Premier Rehab Keller</i> , 596 U.S. 212 (2022)	4
<i>Fleming v. Yuma Reg’l Med. Ctr.</i> , 587 F.3d 938 (9th Cir. 2009) (cert. denied)	12
<i>Flynn v. Distinctive Home Care, Inc.</i> , 812 F.3d 422 (5th Cir. 2016)	12
<i>Herb v. Pitcairn</i> , 324 U.S. 117 (1945)	15
<i>Hiler v. Brown</i> , 177 F.3d 542 (6th Cir. 1999)	13
<i>Monell v. Dep’t of Soc. Servs.</i> , 436 U.S. 658 (1978) ..	16
<i>Redd v. Summers</i> , 232 F.3d 933 (D.C. Cir. 2000) ...	13
<i>Schrader v. Ray</i> , 296 F.3d 968 (10th Cir. 2002)	13
<i>Smith v. Mich. Dep’t of Corr.</i> , 159 F.4th 1067 (6th Cir. 2025)	14
<i>Stanley v. City of Sanford</i> , 606 U.S. 46 (2025)	11
<i>Weatherly v. Ford Motor Co.</i> , 994 F.3d 940 (8th Cir. 2021)	11
<i>Wojewski v. Rapid City Reg’l Hosp.</i> , 450 F.3d 338 (8th Cir. 2006)	7, 9

Statutes

29 U.S.C. § 701	3
29 U.S.C. § 794	3, 5, 17, 18
29 U.S.C. § 794a	4
42 U.S.C. § 1983	6, 7, 8

42 U.S.C. § 12102	4
42 U.S.C. § 12112	4
42 U.S.C. § 12201	4
42 U.S.C. § 12203	4
42 U.S.C. §§ 12111 et seq.....	5
42 U.S.C. §§ 12201–12204 and 12210	5
Ark. Code Ann. § 16-123-105	6
Ark. Code Ann. § 21-9-301	8
Rules	
Sup. Ct. R. 10	15
Sup. Ct. Rule 14.1	11
Regulations	
34 C.F.R. § 100.7	5
34 C.F.R. § 104.61	5
Legislative History	
S. Rep. No. 102-357 (1992).....	6
Other Authorities	
William Howard Taft, <i>The Jurisdiction of the Supreme Court under the Act of February 13, 1925</i> , 35 Yale L.J. 1 (1925)	17

STATEMENT OF THE CASE

This case presents the narrow question whether Section 504 of the Rehabilitation Act of 1973 permits an employment-retaliation claim against a public-school district by a parent employee of a third-party contractor supplying substitute teachers. The Arkansas Supreme Court concluded that it does not. The court's decision is faithful to the text and legislative history of Section 504, including Congress's addition of subsection (d) to the statute in 1992. It also upholds Section 504's main purpose of guaranteeing that federal funding is not used to finance discrimination against qualified individuals with disabilities.

The Arkansas courts did not decide whether independent contractors have the same right as employees to sue for discrimination under Section 504. That simply was not the issue presented below. Further, there are two independent legal grounds supporting the final judgment that remain unchallenged in the petition.

The lower court's decision will affect few people beyond the parties to the case. Lawsuits by employees of independent contractors are rare under Section 504, and the outcome of this case does not touch on a wide public or governmental interest. The decision below is correct on the facts and on the law. This Court's review is therefore not needed.

A. Factual Background

Petitioner Brandi Greer served as a substitute teacher in the Benton School District ("District") from 2016 until 2018. Pet. App. 2a. While serving as a

substitute teacher, Greer was an employee of Kelly Services, Inc. Pet. App. 2a. Kelly Services was a third-party contractor who provided substitute teachers to numerous school districts, including the District, and assigned those teachers to schools within and outside the county. Pet. App. 10a.

During the 2017–18 school year, Greer frequently served as a substitute teacher at Angie Grant Elementary School where her young child attended. Pet. App. 2a. At some point during the fall semester, a conflict developed between Greer and the child’s teacher, Holly Fite, regarding Fite’s treatment of the child. Pet. App. 2a. In November 2017, Greer filed an ethics complaint with the state board against Fite. Pet. App. 2a.

Afterwards, Angie Grant Elementary School principal Lori Bacon decided that Greer would no longer be permitted to substitute at the school until the ethics complaint against Fite had been fully investigated. Pet. App. 3a. After further investigation, Kelly Services was notified that Greer was not allowed to substitute at any school within the District. Pet. App. 3a.

At all relevant times, Greer was free to accept substitute teaching assignments from Kelly Services in any other school or school district where Kelly Services assigned its employees to serve. Pet. App. 3a. In the end, the state board concluded that Greer’s ethics complaint against Fite was unsubstantiated. Pet. App. 3a.

B. Statutory Framework

Congress enacted the Rehabilitation Act of 1973 with the intent to “establish[] a comprehensive

federal program aimed at improving the lot of the handicapped.” *Conrail v. Darrone*, 465 U.S. 624, 626 (1984). The Act’s purpose was to “empower individuals with disabilities to maximize *employment*” and to support “providers of services in fulfilling the aspirations of such individuals with disabilities for *meaningful and gainful employment*[.]” 29 U.S.C. § 701(b)(1), (3) (emphasis added).

Section 504 of the Rehabilitation Act states:

No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance[.]

29 U.S.C. § 794(a).

Section 504 protects otherwise qualified individuals with disabilities. 29 U.S.C. § 794(a). This Court has described 504’s approach as striking “a balance between the statutory rights of the handicapped to be integrated into society and the legitimate interest of federal grantees in preserving the integrity of their programs.” *Alexander v. Choate*, 469 U.S. 287, 300 (1985).

In short, the Rehabilitation Act prohibits recipients of federal funding from discriminating on the basis of disability. *Cummings v. Premier Rehab Keller*, 596 U.S. 212, 218 (2022). Specifically, Section 504(a) is aimed at ensuring that federal funds are not used to finance discrimination. *See id.*

The Americans with Disabilities Act of 1990 (ADA), as amended, is another federal statute that prohibits discrimination based on disability. The ADA applies to private employers and uses the same definition of a qualified “individual with a disability” as the Rehabilitation Act. 42 U.S.C. § 12102(20)(B). The ADA covers employees and job applicants and prevents employers from discriminating against them based on disability. 42 U.S.C. § 12112(a). When enacting the ADA, Congress expressly directed that the ADA should not “invalidate or limit” the remedies, rights, and procedures of any federal law. 42 U.S.C. § 12201 (b).

The discrimination protections afforded disabled individuals under the Rehabilitation Act and the ADA are largely the same. The two statutory schemes overlap considerably. Congress has prevented public schools from discriminating under both the ADA and Section 504. *A.J.T. v. Osseo Area Sch., Indep. Sch. Dist. No. 279*, 605 U.S. 335, 338 (2025).

However, unlike the ADA, the Rehabilitation Act does not contain an express retaliation provision. *See* 42 U.S.C. § 12203(a). Instead, Section 505 of the Rehabilitation Act incorporates the remedies, procedures, and rights of Title VI of the Civil Rights Act of 1964. 29 U.S.C. § 794a(a)(2). The Office for Civil Rights, Department of Education, has promulgated the following regulation implementing Section 504:

No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the [Civil Rights Act] or this part, or because

he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under this part.

34 C.F.R. § 100.7(e); *see also* 34 C.F.R. § 104.61 (incorporating procedural provisions applicable to Title VI).

Congress also addressed employment-discrimination claims when it amended Section 504 of the Rehabilitation Act in 1992. The statute provides:

(d) Standards used in determining violation of section. The standards used to determine whether this section has been violated in a complaint alleging *employment discrimination* under this section *shall be* the standards applied under title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.) and the provisions of sections 501 through 504, and 510, of the Americans with Disabilities Act of 1990 (42 U.S.C. 12201–12204 and 12210) *as such sections relate to employment*.

29 U.S.C. § 794(d) (emphasis added).

Subsection (d) provides the “standards” that are used to determine Section 504 claims involving “employment discrimination.” The 1992 Senate Report states that the purpose of enacting this particular subsection was to “ensure uniformity and consistency of interpretations” as to what conduct would violate both Section 504 and Title I of the ADA. S. Rep. No. 102-357, at 71 (1992).

C. Judicial Proceedings

In 2020, Greer filed suit in the Saline County Circuit Court against the District, Lori Bacon (individually and in her official capacity as principal), and Kelly Services, Inc. Pet. App. 24(a). In her first complaint, Greer alleged discrimination and retaliation claims under the Rehabilitation Act, the First Amendment of the United States Constitution, and the First Amendment of the Arkansas Constitution. Pet. App. 25a. Greer later dismissed Kelly Services, Inc. as a defendant in the case and added Lita Gattis (individually and in her official capacity as assistant superintendent). Pet. App. 25a.

The operative pleading—Greer’s amended complaint—alleged that the District violated Section 504 of the Rehabilitation Act by retaliating against her after she requested reasonable accommodations for her son’s disability and complained about her child’s teacher discriminating against him. Pet. App. 3a. Greer also alleged that Bacon and Gattis violated 42 U.S.C. § 1983 and the Arkansas Civil Rights Act (“ACRA”)¹ by retaliating against her for exercising her First Amendment rights under the state and federal constitutions. Pet. App. 3a.

In 2021, Greer moved for partial summary judgment on liability. Pet. App. 3a. The basis for her motion was as follows. After Greer requested disability accommodations for her son and filed an ethics complaint against his teacher with the governing state board, she was barred from working as a substitute teacher in the district. Greer alleged that this adverse action constituted retaliation as a

¹ Ark. Code Ann. § 16-123-105

matter of law under Section 504, 42 U.S.C. § 1983, and ACRA. Pet. App. 37a–40a. Greer maintained that there was no evidence she was a disruption at the elementary school and so the District had no legitimate reason to restrict her teaching assignment there. Pet. App. 26a.

Shortly after, the District filed a cross-motion for summary judgment. Citing *Wojewski v. Rapid City Regional Hospital*, 450 F.3d 338 (8th Cir. 2006), the District asserted that it was entitled to summary judgment on Greer’s Section 504 claim because Greer was not the District’s employee. Pet. App. 4a, 46a. In addition, the District argued that Bacon and Gattis were entitled to summary judgment on Greer’s § 1983 and ACRA claims because Greer’s speech did not address a matter of public concern. Pet. App. 16a. Moreover, the District maintained that Bacon and Gattis were individually entitled to qualified immunity. Pet. App. 5a. Furthermore, Greer’s rights were not violated pursuant to any District policy, custom, or practice; Greer suffered no adverse employment action; and Greer failed to mitigate her damages. Pet. App. 4a.

On November 22, 2021, the trial court partially granted and partially denied the parties’ cross-motions for summary judgment. Pet. App. 36a.

On the facts, the trial court held that Greer was an employee of a third-party contractor and not the District’s employee. Pet. App. 41a. Following that, the trial court found—as a matter of law—that the District, Bacon, and Gattis retaliated against Greer after she filed an ethics complaint against her child’s teacher. Pet. App. 45a. The court found no “articulable non-discriminatory reason for the

directive keeping [Greer] from substitute teaching in the entire district[.]” Pet. App. 45a.

The trial court granted Greer judgment on liability for her claims brought under Section 504, 42 U.S.C. § 1983 and ACRA. Pet. App. 26a, 48a. Next, the court denied the District’s summary-judgment motion on liability. Pet. App. 48a. However, the court concluded that as public employees Bacon and Gattis were entitled to statutory immunity from liability and suit under Ark. Code Ann. § 21-9-301, except to the extent liability coverage was available to them under the District’s insurance policy. Pet. App. 24a–26a.

Bacon and Gattis timely appealed the trial court’s immunity decision on the basis of state law. Pet. App. 24a. The Arkansas Court of Appeals certified the case to the Arkansas Supreme Court. Pet. App. 24a. When the case was decided, the Arkansas Supreme Court affirmed in part and reversed in part. The court held that the state immunity statute applied to Greer’s ACRA claims but not to her § 1983 claims. Pet. App. 29a. On remand after the first appeal, the trial court dismissed Greer’s 42 U.S.C. § 1983 individual-capacity claims on federal immunity principles. Pet. App. 5a.

In August 2024, over the District’s objections, the trial court convened a jury trial on damages for Greer’s remaining claims:

- (a) the § 1983 official-capacity claims against Bacon and Gattis (claims against the District);
- (b) the ACRA official-capacity claims against Bacon and Gattis (claims against the District);
- (c) the ACRA individual-capacity claims against Bacon and Gattis; and

(d) the Section 504 retaliation claim against the District.

Pet. App. 5a.

Following the trial, a Saline County jury returned a unanimous general verdict in Greer's favor—awarding her \$3,500 in punitive damages and \$3,500 in compensatory damages on all claims. Pet. App. 5a. Afterwards, Greer sought a permanent injunction barring the District from excluding her from substitute teaching assignments. The trial court granted all the relief Greer requested. Pet. App. 6a.

In September 2024, a final judgment was entered in the case. Pet. App. 6a. The District timely appealed the final judgment and all intermediate orders necessarily affecting it, including the trial court's denial of the District's summary-judgment motion on liability. Pet. App. 6a.

Following the District's second appeal, the Arkansas Supreme Court reversed and dismissed in a 5–2 opinion, which was handed down on March 12, 2026. Pet. App. 1a. As detailed in the petition, the state supreme court held that Greer's retaliation claim failed because she was not the District's employee. Pet. App. 10a. The court simply agreed with existing Eighth Circuit law holding that independent contractors and other nonemployees are not protected from discrimination under Section 504. Pet. App. 9a. *See, e.g., Wojewski v. Rapid City Reg'l Hosp.*, 450 F.3d 338, 343–44 (8th Cir. 2006).

Yet the Arkansas Supreme Court also reversed the judgment on separate state-law grounds. Pet. App. 14a. The court held that Greer's individual ACRA claim failed because the ethics complaint brought against her child's teacher concerned a

private grievance and was not protected speech under Arkansas law. Pet. App. 16a.

As relevant here, the Arkansas Supreme Court also reversed the trial court's grant of summary judgment on Greer's § 1983 and ACRA official-capacity claims. Pet. App. 11a. Because Greer failed to show that a District policy, custom, or final policymaker caused the alleged constitutional violation, her official-capacity § 1983 and ACRA claims must be dismissed. Pet. App. 13a. The court reasoned that the appeal record contained no evidence that the school board (the District's final policymaker under state law) authorized, directed, or even knew about the decision to bar Greer from serving as a substitute teacher. Pet. App. 13a.

Accordingly, the Arkansas Supreme Court held that Greer's Section 504 retaliation claims, ACRA claims, and § 1983 claims all failed as a matter of law. Pet. App. 17a. In sum, the supreme court reversed the trial court's summary-judgment rulings, reversed the jury's \$7,000 damages award, vacated the permanent injunction, and remanded for entry of judgment in the appellants' favor. Pet. App. 17a.

On April 14, 2026, Greer filed a petition for a writ of certiorari. The case was docketed with this Court on April 20, 2026. On June 11, 2026, the Court requested a response. The time to file a response was extended up to and including August 12, 2026. Respondents have timely submitted the requested response.

REASONS FOR DENYING THE PETITION

I. There is no existing circuit split on the real question presented.

The Court should deny this petition because the question it presents is one that the lower courts did not decide. As Justice Thomas observed, this Court should reject a “bait-and-switch” from the real issue presented. *Stanley v. City of Sanford*, 606 U.S. 46, 74 (2025) (Thomas, J., concurring). The petition asks whether “independent contractors have the same rights as employees to sue for discrimination” under section 504. Pet. *i*. But Petitioner Greer did not sue the District for discrimination. Pet. App. 3a. She sued for retaliation. *Ibid*. Moreover, Greer was not an independent contractor of the District. Indeed, Greer was an employee of a third-party independent contractor, Kelly Services, and “[n]o party disputes that finding.” Pet. App. 10a.

Rule 14.1(a) limits this Court’s review to “[o]nly the questions set out in the petition, or fairly included therein.” Federal courts have long treated retaliation claims as distinct from discrimination claims. *See, e.g., Weatherly v. Ford Motor Co.*, 994 F.3d 940, 944–45 (8th Cir. 2021). Surprisingly, the petition does not meaningfully address whether the statutory analysis that governs Section 504 discrimination claims also governs nonemployee retaliation claims brought by nondisabled individuals.

Separately, the federal caselaw that Petitioner cites does not conflict with the judgment entered below. Petitioner is correct that the federal circuits have divided over whether an independent contractor

may bring a discrimination claim under Section 504. Pet. 2. Respondents acknowledged this circuit split in their briefing in the lower courts and recognize that existing divide here. But the Arkansas Supreme Court did not decide whether independent contractors have the same rights as employees to sue for discrimination.

Writing for the majority, Arkansas Supreme Court Justice Womack concluded that Greer could not bring a *retaliation* claim against the District. The holding was simple—“[h]ad Congress wished to extend § 504’s employment-retaliation protections to independent contractors or other nonemployees, it could have said so. It did not.” Pet. App. 10a. Simply stated, the lower court’s decision did not create a federal circuit split or add to an existing one.

The cases cited in the petition are easily distinguishable because they involve employment-discrimination claims brought by independent contractors, not retaliation claims brought by employees of third-party contractors. The primary legal authorities Petitioner cites are as follows:

- *Flynn v. Distinctive Home Care, Inc.*, 812 F.3d 422 (5th Cir. 2016) (permitting a physician who was an independent contractor to bring an employment-discrimination claim against a federal contractor under Section 504)
- *Fleming v. Yuma Reg’l Med. Ctr.*, 587 F.3d 938 (9th Cir. 2009) (cert. denied) (holding that an independent-contractor anesthesiologist who contracted directly with a federally funded hospital could bring a Section 504 employment-discrimination claim)

- *Schrader v. Ray*, 296 F.3d 968 (10th Cir. 2002) (upholding a clerk's claim for employment discrimination against her federally funded employer who employed fewer than fifteen people).

The one case that Petitioner expressly identifies that involves retaliation is *Redd v. Summers*, 232 F.3d 933 (D.C. Cir. 2000), but it, too, is distinguishable on its facts. *Redd* was a joint employment case involving a tour guide employed by a private staffing agency and assigned to work at the Bureau of Engraving and Printing. The staffing company later removed Redd from her Bureau assignment and both Redd and her mother complained about it. *Id.* at 937. The D.C. Circuit reversed the summary judgment granted by the lower court and allowed Redd's section 504 claims to move forward based on her exclusion from a federal program or activity. *Id.* at 941. The *Redd* court did not address or decide whether an employee of an independent staffing agency may maintain a retaliation action against a recipient of federal funds who never employed her.

The petition's characterization of Sixth Circuit law is similarly unpersuasive. Petitioner cites *Hiler v. Brown*, 177 F.3d 542 (6th Cir. 1999). Pet. 17. In *Hiler* the Sixth Circuit held that individual defendants who are not statutory employers cannot be held liable for retaliation under Section 504. The court did not hold that a Section 504 plaintiff must be an employee to sue nor did it address independent contractors. *Id.*

Petitioner's reliance on *Hiler* is misplaced because the Sixth Circuit has since explained that *Hiler* merely assumed the existence of a private retaliation

action under Section 504 without deciding whether Section 504 authorizes a private right of action. *Smith v. Mich. Dep't of Corr.*, 159 F.4th 1067, 1071 (6th Cir. 2025). In fact, the Sixth Circuit has recently held that Section 504 of the Rehabilitation Act does not provide a private cause of action for retaliation.² Like the court in *Hiler*, the Arkansas Supreme Court assumed, without deciding, that Section 504 authorizes a private right of action while still recognizing that “the threshold issue is far from clear.” Pet. App. 7a. Accordingly, it would be best to let these issues percolate in the circuit courts, so that any divergence in views can either come into sharper focus or be resolved by the lower courts.

Usually this Court grants review to resolve a circuit split over a legal question squarely presented, not to explore other interesting questions. The petition identifies no circuit split regarding the issues actually decided by the lower courts in this case. Whatever disagreement may exist among federal circuits regarding discrimination claims brought by independent contractors, there is no comparable conflict over the fact-bound retaliation question presented here.

Accordingly, the petition should be denied.

² As of this filing, a petition for rehearing is pending. *Smith v. Mich. Dep't of Corr.*, 159 F.4th 1067 (6th Cir. 2025) (cert. denied June 29, 2026) (Sup. Ct. Docket No. 25-1028).

II. This case is not a suitable vehicle for review because the final judgment does not turn on the question presented.

Petitioner insists that this case is a “perfect vehicle” to decide whether the Rehabilitation Act protects independent contractors and other nonemployees from discrimination. But because the judgment below also rests on independent grounds unaffected by the question presented, the case is not a suitable vehicle for review.

Certiorari is a discretionary writ that may be granted “only for compelling reasons.” Sup. Ct. R. 10. When a state-court judgment rests on multiple, independent grounds, and the petitioner fails to attack any independent, alternative bases for the judgment, this Court may decline to hear the case. As this Court has explained:

We are not permitted to render an advisory opinion, and if the same judgment would be rendered by the state court after we corrected its views of federal laws, our review could amount to nothing more than an advisory opinion.

Herb v. Pitcairn, 324 U.S. 117, 126 (1945).

The outcome below rests on two independent grounds that Petitioner does not challenge. First, the Arkansas Supreme Court held that Greer’s individual ACRA claims failed because her underlying ethics complaint addressed a private, not public, grievance. The complaint did not qualify as a protected activity under Arkansas law. Pet. App. 14a. Second, the court held that Greer’s § 1983 and official-capacity ACRA claims failed because she did not show the existence

of a District policy, custom, or final-policymaker decision. Pet. App. 13a; *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 694 (1978) (municipal liability requires a policy, custom, or final decision).

The Arkansas Supreme Court reversed the \$7,000 judgment on these two grounds. Neither ground turns on whether Greer could bring her retaliation claim as an independent contractor or a nonemployee under Section 504. Additionally, because the verdict forms submitted to the jury in this case do not distinguish among Petitioner's theories of recovery, there is no reasonable way to determine what portion, if any, of the damages that the jury awarded were attributable to Greer's Section 504 retaliation claim, as opposed to her ACRA and § 1983 claims. So even if this Court reversed the lower court's decision on Greer's 504 claim, there would be no basis to reinstate the damages awarded to Greer as a whole. Nor is there a clear legal basis to put back in place the permanent injunction granted by the trial court.

Because Petitioner has not challenged the independent grounds supporting the Arkansas Supreme Court's decision, this Court should consider them waived on review. There is no compelling reason for immediate review. Nothing in this state-court, fact-bound decision satisfies the Supreme Court of the United States's criteria for a grant of a writ of certiorari. The case is not, in Rule 10's terms, a vehicle presenting compelling reasons for review; it is instead a vehicle that goes nowhere.

III. The decision below is not wrong, and so Petitioner's arguments lack merit.

As Chief Justice Taft explained over a century ago, “[t]he function of the Supreme Court is . . . not the remedying of a particular litigant’s wrong, but the consideration of cases whose decision involves principles, the application of which are of wide public or governmental interest.” William Howard Taft, *The Jurisdiction of the Supreme Court under the Act of February 13, 1925*, 35 Yale L.J. 1, 2 (1925).

At its heart, this case is about a parent’s dispute with a teacher over the treatment of her child. It is not the type of case that warrants this Court’s review. The case does not expose systemic wrongdoing nor does it touch on matters of great public interest. Simply stated, the matter does not present the sort of exceptional circumstances necessary to grant certiorari.

On the merits, the Arkansas Supreme Court’s interpretation of Section 504 was faithful to the statutory text. Section 504 employment-retaliation claims must be judged “under the standards applied under title I . . . as such sections relate to employment” 29 U.S.C. § 794(d). Congress’s use of mandatory language “shall” along with the qualifying phrase “as such sections relate to employment” is instructive. Title I’s “standards” necessarily include an initial determination whether an employer-employee relationship exists within the meaning of the statute.

The result the Arkansas Supreme Court reached in this case is consistent with the purpose and scope of the Rehabilitation Act. Section 504 primarily

focuses on protecting equal opportunity for an “individual,” 29 U.S.C. § 794(a), and that is the individual with the disability, not a third party. Petitioner invites this Court to expand the reach of Section 504 in such a way that any advocating individual has authority to bring a retaliation claim. This Court should decline the invitation and be cognizant of the need to keep Section 504 “within manageable bounds[.]” *Alexander v. Choate*, 469 U.S. 287, 299 (1985).

In the end, the Arkansas Supreme Court was correct in finding that Congress intended to channel Section 504 employment-retaliation claims through the employer-employee framework established under Title I of the ADA. Absent that employment relationship, a retaliation claim brought under Section 504 fails at the outset.

CONCLUSION

The petition for a writ of certiorari should be denied.

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